

INFORMATION SHEET

DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: San Francisco District

FILE NUMBER: 400281

REGULATORY PROJECT MANAGER: Jacqueline Meyer

Date: 13 March 2007

PROJECT REVIEW/DETERMINATION COMPLETED: In the office (Y/N) Y

Date: 4 April 2007

At the project site (Y/N) Y

Date: 20 January 2007

PROJECT LOCATION INFORMATION:

State: California

County: Sonoma

Center coordinates of site by latitude & longitude
coordinates:

Approximate size of site/property (including uplands) in
acres :2.5

Name of waterway or watershed: Russian River

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands		x							
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				x	
Is or would be used as habitat by other migratory birds that cross state lines?				x	
Is or would be used as habitat for endangered species?					x
Is used to irrigate crops sold in interstate commerce?		x			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Approved

ADDITIONAL INFORMATION SUPPORTING NJD

The area verified for this jurisdictional determination is an approximate 2.5 acre parcel located near Guerneville in Sonoma County, California. The property is owned by the Russian River County Sanitation District, and is located at the Wastewater Treatment Plant (WWTP). On site, there is an ephemeral drainage channel (~.03 acres), and two small wetlands (~.33 acres). The ephemeral drainage course is a rock-lined channel, approximately 2-3 feet wide and possesses a distinguishable ordinary high water mark (OHWM). It has been modified to drain stormwater from the hills upslope of the WWTP, conveying water southward to two small wetlands. Both wetlands receive water from the drainage channel and are used as spray fields, receiving treated effluent from the WWTP during the dry season.

Wetland A, located on the southwestern portion of the study site, appeared to be a depressional feature in the landscape and consisted of a scrub-shrub plant community (*Salix laevigata*, *Polygonum sp.*, *Lolium multiflorum* and *Cyperus*). Stained leaves were present, indicative of ponding, although no standing water was present at the time of our visit. One soil sample was taken and consisted of 30% redoximorphic features, within 0-10 inches, and was classified as a clay-loam with a matrix color of 10YR 3/1 and redox of 5YR 5/8. These results matched the delineation report submitted by Analytical Environmental Services(AES).

Wetland B, located on southeastern portion the study site, receives water from the ephemeral channel via a culvert. This wetland is located approximately 700 ft above the Russian River, and no topographical or hydrologic features connecting the wetlands to the Russian River were observed. The landscape features leading to the river were a series of small depressions/troughs and terraces and appeared to be comprised of a healthy upland plant community (redwood forest). It is dominated by a redwood (*Sequoia sempervirens*) forested community. There was very little vegetation present in the understory at the time of the site visit; some nutsedge (*Cyperus*), himalayan blackberry and Oregon ash were present. Similar to Wetland A, evidence of ponding was observed with the presence of matted, wet leaves. When the delineation was conducted by the applicant's agents (AES), in May 2006, standing water was present. Two sample data points were taken during the site visit, one in the wetland and one in an upland area. The sample taken from the wetland consisted of 30-40% redoximorphic features at 0-10 inches, with a matrix color of 10YR 3/1, redox color of 5 YR 5/8 and a clay-loam texture. The second sample from the upland area had the same matrix color of 10YR 3/1, and redox color of 5YR 3/4, however, there was no hydrophytic vegetation present or evidence of hydrology at the time of sampling for this data point.

The two wetlands are separated from each other by an earthen berm which is used as a roadway. There were no culverts under the road connecting the two wetlands. Information provided by the applicant indicates that the roadway and ephemeral drainage channels were constructed sometime in the 1970's. The wetlands appear to be supported hydrologically by the ephemeral drainage

channel in the wet season and by the spray fields in the dry season. It is probable that the wetlands would not persist during the dry season if the WWTP ceased using them as treatment fields. Furthermore, although the ephemeral drainage channel possesses the requisite characteristics of other waters of the U.S. such as an identifiable channel and OHWM, the flow of water drains into the isolated wetlands and discontinues there. Therefore, the drainage channel is also presumed to be isolated.

Since no hydrologic connection could be established linking the wetlands to the Russian River, it has been determined that there is no jurisdiction under CWA Section 404, as the wetlands and associated ephemeral drainage channel are presumed to be isolated. This determination is consistent with the U.S. Supreme Court decision of January 9, 2001, concerning the *Solid Waste Association of Northern Cook County v. United States Corps of Engineers*, 531 U.S. 159 (2001), (hereinafter "SWANCC"). In the SWANCC decision, the Court invalidated, at least, portions of the Migratory Bird Rule as a nexus to the Commerce Clause and ruled that the Corps had exceeded its statutory authority in exerting jurisdiction over non-navigable isolated, intrastate waters that did not provide some other interstate or foreign commerce use (33 CFR § 328.3(a)(3)).